

Message

From: Campbell, Rich [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E27D0A99A96942119FF85AE2A6132062-RCAMPBEL]
Sent: 3/11/2019 3:59:57 PM
To: Kermish, Laurie [Kermish.Laurie@epa.gov]
Subject: FW: FYI

fyi

From: Nalven, Heidi
Sent: Monday, March 11, 2019 8:58 AM
To: Campbell, Rich <Campbell.Rich@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>
Subject: RE: FYI

Inside EPA

From: Campbell, Rich
Sent: Monday, March 11, 2019 11:48 AM
To: Nalven, Heidi <Nalven.Heidi@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>
Subject: RE: FYI

Thanks! Where's this published?

From: Nalven, Heidi
Sent: Monday, March 11, 2019 8:46 AM
To: Landers, Timothy <Landers.Timothy@epa.gov>; Campbell, Rich <Campbell.Rich@epa.gov>
Subject: FYI

EPA Region 9 appears to drop objections to Arizona mine

March 07, 2019

EPA Region 9 appears to be dropping its long-running objections to a planned Arizona copper mine by saying it will not raise the issue from the region to agency headquarters, and will instead allow the Army Corps of Engineers to issue a Clean Water Act (CWA) dredge-and-fill permit for the project.

The Corps confirmed to the [Arizona DailyStar](#) March 4 that it intends to issue the CWA section 404 permit for the Rosemont Copper Mine, and EPA told the paper it will not ask for additional review of the permit.

EPA Region 9, which includes Arizona and other Western states, has repeatedly criticized the project in the past, most recently in [November 2017 comments](#) to the Corps. At the time, the region said, "As with prior EPA reviews, we continue to find the permitted activities of the proposed mine will significantly degrade Cienega Creek, Davidson Canyon, and their tributaries despite the actions proposed in the" habitat mitigation and monitoring plan.

But Region 9 Administrator Michael Stoker told Stu Gillespie of the Earthjustice, who represents the Tohono O'Odham Nation and two other Arizona tribes, in a Feb. 28 email that the regional office was not objecting to the Corps' plan to soon issue the permit -- the last permit needed for the copper mining project to start -- the Arizona paper reports. The regional office also told the paper it was not elevating the issue to headquarters.

Arizona Reps. Raúl M. Grijalva (D), chair of the Natural Resources Committee, and Ann Kirkpatrick (D) said in a Feb. 28 statement after meeting with Corps officials that they “both believe critical questions remain unanswered, including whether there has been adequate review under the National Environmental Policy Act.”

The lawmakers said they “are concerned that this permit could be issued imminently without full consideration of the facts. We’re going to pursue every avenue to ensure Rosemont is handled transparently, and we will be conducting additional oversight of this project.”

The agency’s reversal eliminates the possibility that it will veto the Corps’ permit, given the Trump administration’s objection to vetoing already issued permits.

EPA can use its statutory authority to limit disposal sites that would otherwise be allowed in a dredge-and-fill permit if it finds that there would be “unacceptable adverse effects” to the environment.

While section 404(c) does not allow EPA to completely vacate a permit, a broad enough bar on disposal is seen as a veto for all practical purposes because it effectively blocks the “fill” part of the dredge-and-fill permit.

Federal courts have ruled EPA can use its “veto” authority at any time in the permitting process, including before a permit application is made or retroactively.

But last year then EPA Administrator Scott Pruitt directed the Office of Water to develop a rule restricting when the agency can use its veto authority, specifically eliminating preemptive and retroactive vetoes. Environmentalists have urged the current administrator, Andrew Wheeler, to forgo the rulemaking.

Heidi Nalven

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